

COMMITTEE ON LAND USE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Phillip Farley, Council Member District No. 1

A **meeting** of the **Committee on Land Use**, Standing Committee of Berkeley County Council, was held on **Monday, March 12, 2012**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 6:09 p.m.

PRESENT: Chairman Phillip Farley, Council District No. 1; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Jack H. Schurlknight, Council District No. 6; Committee Member Caldwell Pinckney, Jr., Council District No. 7; Committee Member Steve C. Davis, Council District No. 8; ex-officios Mr. Daniel W. Davis, County Supervisor, Mr. Timothy J. Callanan, Council District No. 2 at 6:15 p.m.; Mr. Robert O. Call, Council District No. 3; and Mr. Dennis Fish, Council District No. 5. Ms. Nicole Ewing, County Attorney and Ms. Catherine Windham, Interim Clerk of County Council.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Chairman Farley: "Good evening ladies and gentlemen. I'd like to call the Committee on Land Use to order."

INVOCATION

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

Chairman Farley: "I'd like to have Mr. Danny Thrower to lead us in the invocation and Ms. Cathy Davis to lead us in the Pledge of the United States of America."

Chairman Farley: "Ms. Clerk, has this meeting been properly noticed via the South Carolina Freedom of Information Act?"

Ms. Windham: "Yes sir, it has."

APPROVAL OF MINUTES:

February 13, 2012

Chairman Farley: "Thank you. Next is the approval of the minutes from the February 13, 2012 meeting."

Committee Member S. Davis: "Move for approval."

Committee Member C. Davis: "Second."

Chairman Farley: “Are there any corrections to these meetings, I mean, to these minutes? All in favor please say Aye? (Ayes). Opposes? (No Response). The minutes stand approved as presented.”

It was moved by Committee Member S. Davis and seconded by Committee Member C. Davis to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

Chairman Farley: “Next we have...”

A. Consideration of a Proclamation to honor the Hanahan High School 2011-2012 Wrestling Team for winning the South Carolina State Championship.

Committee Member S. Davis: “Move for approval.”

Committee Member Schurlknight: “Second.”

Chairman Farley: “I have a motion and a second. All in favor? (Ayes). All opposed? (No Response). Motion carries.”

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve the proclamation honoring the Hanahan High School 2011-2012 Wrestling Team for winning the South Carolina State Championship.** The motion passed by unanimous voice vote of the Committee.

B. Consideration prior to First Reading of the following:

1. REQUEST BY BERENYI CIVIL ENGINEERING, LLC FOR DOLPHIN PROPERTIES, LLC, LOCATED AT 414 JESSEN LANE, CHARLESTON, TMS #267-00-00-074 (2.88 +/- ACRES) FROM HI, HEAVY INDUSTRIAL DISTRICT TO GC, GENERAL COMMERCIAL DISTRICT. COUNCIL DISTRICT 8.

[Staff recommended approval]

[Planning Commission recommended approval – Unanimous]

Chairman Farley: “Mr. Greenway?”

Mr. Eric Greenway: “Essentially, this request is located at the corner of Clements Ferry Road and Jessen Lane. This particular building that’s located in this area was permitted as a warehouse, but recently a data mining company has gone in there. They’re kind of operating out of compliance with the code. We’ve...”

Committee Member S. Davis: “Move for approval.”

Mr. Greenway: “Worked out a deal with the property owner...”

Committee Member Schurlknight: "Second."

Mr. Greenway: "To rezone the property to General Commercial and we are in full support of the request."

Chairman Farley: "I have a motion and a second for approval. Is there anymore discussion? All in favor? (Ayes). All opposed? (No Response). The motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** consideration, prior to First Reading, a request by **Berenyi Civil Engineering, LLC for Dolphin Properties, LLC, from HI, Heavy Industrial District to GC, General Commercial District.** The motion passed by unanimous voice vote of the Committee.

2. REQUEST BY SHARON GREENE, LOCATED AT 2253 SANTEE RIVER ROAD, ST. STEPHEN, TMS #049-00-02-018 (2 ACRES) FROM GC, GENERAL COMMERCIAL DISTRICT TO FLEX-1, AGRICULTURAL DISTRICT. COUNCIL DISTRICT 8.

[Staff recommended approval]

[Planning Commission recommended approval – Unanimous]

Mr. Greenway: "This request has a little bit of a twist to it. Both the staff and the Planning Commission recommended approval, but the Planning Commission qualified their recommendation on the fact that they felt RNC, Rural Neighborhood Commercial would be a more appropriate use for the property, than General Commercial. We would agree with that. We just thought it would be easier to go with...The property is already zoned General Commercial and she's trying to take some of the property from General Commercial to Flex-1. But, they would like for the existing General Commercial to also be rezoned to RNC to get rid of a past mistake on the zoning map."

Committee Member S. Davis: "Move for approval."

Committee Member Schurlknight: "Second."

Chairman Farley: "I have a motion and a second. Is there anymore discussion or does anybody got any questions on that? All in favor? (Ayes). All opposed? (No Response). The motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** consideration, prior to First Reading, a request by **Sharon Greene** with a **correction of two (2) acres to three (3) acres** from which **two (2) acres will be rezoned from GC, General Commercial District to Flex-1, Agricultural District** and the **remaining one (1) acre to be rezoned from GC, General Commercial District to RNC, Rural Neighborhood Commercial District.** The motion passed by unanimous voice vote of the Committee.

3. REQUEST BY BRENDA FISHBURNE, LOCATED AT 923 OLD BACK RIVER RD., GOOSE CREEK, TMS #244-15-07-005 (.38 +/- ACRES) FROM R-1,

SINGLE FAMILY RESIDENTIAL DISTRICT TO R-2, MANUFACTURED RESIDENTIAL DISTRICT. COUNCIL DISTRICT 3.

[Staff recommended approval]

[Planning Commission recommended approval – Unanimous]

Mr. Greenway: “Yes sir, in this particular case, typically staff would not be in favor of rezoning property from R-1 to R-2, if the property was surrounded, if the property was surrounded by R-1. This property is not in this particular case. This property is surrounded by R-2. The property owner desires to tear down an existed dilapidated house on the property. Upgrade the property with a newer manufactured home. Therefore, we and the Planning Commission supported the request.”

Committee Member Schurlknight: “Move for approval.”

Committee Member S. Davis: “Second.”

Chairman Farley: “I have a motion and a second. Is there any discussion? All in favor? (Ayes). All opposed? (No Response). The motion carries.”

It was moved by Committee Member Schurlknight and seconded by Committee Member S. Davis to **approve** consideration, prior to First Reading, a request by **Brenda Fishburne** from **R-1, Single Family Residential District to R-2, Manufactured Residential District**. The motion passed by unanimous voice vote of the Committee.

C. Consideration prior to Second Reading of the following:

- 1. BILL NO. 12-01, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, RE: CHARLIE O. HOWARD, II FOR MARSHAL MANIGAULT, JR. LOCATED AT 1616 NORTH HIGHWAY 52, MONCK'S CORNER, TMS #103-00-02-004 (4.0 +/- ACRES) FROM FLEX-1, AGRICULTURAL DISTRICT TO RNC, RURAL NEIGHBORHOOD COMMERCIAL DISTRICT. COUNCIL DISTRICT 8.**

Committee Member S. Davis: “Move for approval.”

Committee Member Schurlknight: “Second.”

Chairman Farley: “I have a motion and a second. Discussion?”

Mr. Greenway: “If I may just for the Land Use Committee’s sake. I wanted to make it clear from my presentation at First Reading that we as a staff do not support this request. It violates the Land Use Plan map for this area. I think we’re going to be headed for trouble on this rezoning down the road because I do not think that the property can function well in the market out there as a restaurant. I think we’re going to have a zoning violation on the property long-term

and I think the staff is going to have to spend a lot of time and a lot of taxpayer money fighting a potential zoning violation on this property. So, I would just appeal to Land Use Committee and to the full Council to take that under consideration as you proceed.”

Committee Member Schurlknight: “Mr. Chairman?”

Chairman Farley: “Yes, sir.”

Committee Member Schurlknight: “Eric, I hear what you’re saying. I understand what you’re saying. What...and I think about Mr. Manigault that owns that property now with that building. He’s got a sizable investment. What is some of his alternatives as far as to be able to utilize that investment?”

Mr. Greenway: “Yeah well, Mr. Manigault, the only answer I have to that question is that Mr. Manigault, himself, has basically taken away his investment because he asked the Tax Assessor’s Office to take it off the tax books as a commercial building and asked to put it on as a storage building. So, he doesn’t, he had no interest when he was paying commercial taxes on it, to maintain it as a commercial property. So, now that this opportunity has come along, we’re back to making the arguments of well, I want a commercial building. I’ve got an investment there. But whenever it was sitting vacant and he was paying commercial taxes on it, he certainly was not interested in maintaining it as a commercial property for tax purposes. So, you know again, as far as what he can do with the property, there’s a lot of permitted Flex-1 uses. There is a business right up the road from this. I think Mr. Davis brought it up at the First Reading, a kennel, a dog kennel. Those are allowable Flex-1 type uses and things. Because those are agricultural related uses and I just wanted to be clear that we do not support this because it violates the Land Use Plan map and I think we’re headed for some potential zoning violations down the road.”

Committee Member Schurlknight: “So Eric, what you’re saying is that Mr. Manigault came in and changed the use of the building.”

Mr. Greenway: “On the property tax books.”

Committee Member Schurlknight: “As it pertains to property taxes, how much is he being taxed?”

Mr. Greenway: “That’s correct. Now the building is still there. It’s still set up as a store and all of that, but whenever he was paying the property taxes on it as a commercial unit and it was sitting vacant, he asked the Tax Assessor’s Office not to list it as a commercial structure. So, that’s the only response I have to that particular question.”

Committee Member Schurlknight: “Ok, I didn’t realize that, thank you.”

Committee Member S. Davis: “Yeah, but even in that vender. How long had that building remained vacant?”

Mr. Greenway: "That I do not know. See, that's the one thing that you all have knowledge of that I don't, because..."

Committee Member S. Davis: "I pass it every morning. I've been coming to Moncks Corner for thirty years and I wouldn't say I paid specific attention to that building, but the bottom line is, I think he's done nothing no different than any contentious entrepreneur would have done in reference try to defer some costs. But, the building has all the qualifications to be a commercial building. I hear you in reference to the potential for what can transpire. But Eric, we can be preventative in every aspect especially when some citizen comes forward and say that they want an opportunity to exercise what has made this Country great; an opportunity to create and maintain a business. For us to forecast what the outcome is going to be is, you know, it's kind of hard to determine. That's why we put rules in place. Now, if they would come so much of a nuisance. It's not that the County, or the Planning don't have enough rules or laws in place. You shut them down. But, I just think it's kind of hard press to not give them that entrepreneur opportunity specifically where I view other adjoining businesses as commercial. No neighbors complained. Comply with the State. I think they should be afforded that opportunity. That's basically where I'm at. I accept your position in that regard, but I think these young men who are trying to create this business should be afforded that opportunity."

Council Member Callanan: "Mr. Chairman?"

Chairman Farley: "Mr. Callanan?"

Council Member Callanan: "Eric, the concern I have is let's say we were to approve this. Then someone else, even if it was not an adjacent piece of property, someone in similar circumstance somewhere else, would this create a precedent that we have to then defend against why we made an exception in this case. And then, at a future, someone who wanted to do, somewhere in a residential or agricultural area, put a commercial business in; we have to say no then?"

Mr. Greenway: "Right, I mean I think you all have a lot of discretion in your zoning powers and abilities. There are certainly some arguments that can be put forth and again, I'm not, you know, trying to be wishy washy here, but there's certainly some arguments that can be put forth to support the rezoning. Number one, it's an existing commercial building, so I think you could use that as a basis and no, I don't think you would set a precedent because you all control the zoning of the County and unless you're being arbitrary in your decision, someone can prove that, then you're generally protected with the zoning decisions you wanna make."

Council Member Callanan: "So, if we were to do this and then you know, it got approved. Then turn down a similar situation somewhere else in the County."

Mr. Greenway: "I don't think it would be an issue."

Council Member Callanan: "They would go to appeal the Zone of Appeals. They could not make the argument of saying this is, you guys have a precedent here. You already made an exception to this piece of property. This is nearly an identical situation."

Mr. Greenway: "Yeah."

Council Member Callanan: "Why are they given this beneficial treatment and we are not?"

Mr. Greenway: "Yeah, I'll use a phrase here that attorney's despise. I'm no attorney, but you know, I think in this particular case, if you all were to rezone the property, I think there would be enough evidence that would support the County's position. With the fact this is an existing commercial structure that was historically grandfathered, that would allow us to make a counter argument that it was not an arbitrary decision. It was based on sound reasoning and no one could prevail on that claim, that we were setting precedents; because it is a commercial building."

Council Member S. Davis: "And on that note Mr. Chairman, I take exception; say that this is an exception. This is not an exception. This isthey're clearly justification for this to be commercial, because it used to be commercial. There's no question that there's commercial right along this area on US 52 and if I was to use an illustration, I was out on Clements Ferry Road. I went to an AME church and commercial is right on the darn corner, less than 100 yards away. And so, that argument, don't prevail. They got restaurants on Clements Ferry Road and got residences right in the back yard not too far with a little wall or buffer in place. So, I don't think this will create a precedent that we need to be concerned about because I think there are adequate justifications for this Council to give these entrepreneurs an opportunity. And, I think there are measures in place, if they violated to the extent that they can be shut down."

Mr. Greenway: "Yeah, they could."

Committee Member S. Davis: "But just to have a blanket saying no, you're not going to have the restaurant because we foresee what's going to happen, I think that's partly unfair."

Mr. Greenway: "Well, again now, in defense of the Planning staff, I will have to say that you know, our recommendation that this restaurant is not gonna be a viable use is based on, you know, our experience with commercial structures between Santee Circle and Bonneau. Especially restaurants, you know most of those that have even opened up in the town of Bonneau, have shut down in the span of three to six months. So, you know..."

Committee Member S. Davis: "They keep taking themselves down to Charleston, that's the problem."

Mr. Greenway: "So anyway, it is based on our experience with the market out there and I think that once we rezone the property....in this particular case you're looking at rezoning four acres of Flex-1 property to General Commercial and the building only sits on a fifth of that

amount of land so if you are inclined to rezone the existing building, I would recommend because we have a situation that I'm dealing with right now off of Clements Ferry Road, where we rezoned several acres that.... The front portion was developed, but we rezoned a bunch of land behind it that's vacant and I've got a residential subdivision behind that now. Now everyone is complaining because the individual that's leased that, all that acreage is getting ready to expand his operation. So, I would recommend that you all amend this down to only a half acre or an acre around that existing building so that we don't have that situation."

Council Member Callanan: "Mr. Chairman, but, wouldn't that require us to subdivide the property?"

Mr. Greenway: "It would require them to sub-divide the property. Before you got through the rezoning process, yes."

Council Member Callanan: "And in the case of Clements Ferry Road...that example of Clements Ferry Road, not yours, this would go against the Comprehensive Plan. Correct?"

Mr. Greenway: "This rezoning, yes."

Council Member Callanan: "Yes, but on Clements Ferry Road it's all commercial?"

Mr. Greenway: "Well, no."

Council Member Callanan: "Or industrial?"

Mr. Greenway: "Depending on how you're going out. If you're leaving 526 the right side of Clements Ferry Road calls for high density residential and commercial in some nodes. The left side is heavy industrial."

Council Member Callanan: "So, it abides? The commercial structures generally there are general in compliance with ..."

Mr. Greenway: "That's right, that's exactly right. That's right. So, anyway, those are...so, I would recommend that if you're going to proceed with a recommendation for second reading that you amend the acreage down to a half acre or an acre and then make a survey and be done so that we don't have a lot of vacant land sitting out there zoned General Commercial."

Council Member Callanan: "Wouldn't this require them to deny it and take it back because we're doing a TMS number and if we were to subdivide?"

Mr. Greenway: "Right."

Council Member Callanan: "The property, we create two different TMS numbers."

Mr. Greenway: "Well, if you guys wanted to recommend Second Reading on the amended acreage then we could do that. Typically, I don't request that people do the survey until between Second and Third Reading because I don't want them to pay for a survey that they can't use in case they should get denied. So, to answer your question, there is a way to do it. We just will make sure that we get the plat between Second and Third Reading that sub-divides their property and then that will be assigned a new tax map number and this will go as the parent tax map number and we can track it that way."

Chairman Farley: "Are they in favor of?"

Mr. Greenway: "Yes they are. That's correct."

Chairman Farley: "Of doing a smaller portion?"

Mr. Greenway: "They are, yeah."

Committee Member S. Davis: "If it's alright Mr. Chairman, I would amend the one acre to accommodate the restaurant and parking facility as commercial."

Chairman Farley: "Acre, half-acre, what?"

Mr. Greenway: "One acre is probably sufficient. That way we can get buffers in."

Chairman Farley: "Ok, well on that then for next meeting we'll have that amended for one acre of the total. One acre out of the four acres, that will be fronting Highway 52."

Committee Member S. Davis: "Yeah."

Mr. Greenway: "Yeah, I think you guys are going to need to vote as well at some point."

Committee Member S. Davis: "Got to vote on it."

Chairman Farley: (Inaudible)

Committee Member S. Davis: "Need a second on the amendment though."

Committee Member Schurlknight: "Second."

Committee Member S. Davis: "Thank you, Jack."

Chairman Farley: "Ok, we have an amendment to reduce it from four acres to one acre. Is there anymore discussion on it? (No Response) All in favor? (Ayes). All opposed? (Nay) I have one Nay."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **amend Bill No. 12-01, reducing it from four acres to one acre.** That amendment passed by majority voice vote of the Committee. Committee Member C. Davis voted Nay.

Chairman Farley: "Now we'll vote on the main question. All in favor? (Ayes). All opposed, Nay? (Nay). We have one Nay. So, it will carry forward to the Second Reading."

Committee Member S. Davis: "Third Reading."

Chairman Farley: "Third Reading? No, it'll carry forward to the Second Reading. Second Reading would be the end of this month."

Committee Member S. Davis: "I thought this was Second Reading tonight?"

Chairman Farley: "This is workshop tonight."

Committee Member S. Davis: "Ok."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** consideration, prior to Second Reading, **Bill No. 12-01.** The motion passed by majority voice vote of the Committee. Committee Member C. Davis voted Nay.

Committee Member Schurlknight: "Move for adjournment."

Committee Member S. Davis: "Second."

Chairman Farley: "I have a motion and a second to adjourn. All in favor? (Ayes). All opposed? (No Response). Motion carries."

Committee Member S. Davis: "Yeah you're right. You're right Mr. Chairman."

It was moved by Committee Member Schurlknight and seconded by Committee Member S. Davis to **adjourn** the Committee on Land Use. The motion passed by unanimous voice vote of the Committee.

The meeting on Land Use ended at 6:28 p.m.

April 9, 2012
Date Approved

COMMITTEE ON LAND USE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Phillip Farley, District No. 1

Members: Mrs. Cathy S. Davis, District No. 4
Mr. Jack H. Schurlknight, District No. 6
Mr. Caldwell Pinckney, Jr., District No. 7
Mr. Steve C. Davis, District No. 8

Mr. Timothy J. Callanan, District No. 2, ex officio
Mr. Robert O. Call, District No. 3, ex officio
Mr. Dennis Fish, District No. 5, ex officio
Mr. Daniel W. Davis, Supervisor, ex officio

A **meeting** of the **COMMITTEE ON LAND USE**, Standing Committee of Berkeley County Council, will be held on **Monday, March 12, 2012**, at **6:00 p.m.**, in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

AGENDA

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

INVOCATION

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

APPROVAL OF MINUTES:

February 13, 2012

A. Consideration of a Proclamation to honor the Hanahan High School 2011-2012 Wrestling Team for winning the South Carolina State Championship.

B. Consideration prior to First Reading of the following:

- 1. Request by Berenyi Civil Engineering, LLC for Dolphin Properties, LLC, located at 414 Jessen Lane, Charleston, TMS #267-00-00-074 (2.88 +/- Acres) from HI, Heavy Industrial District to GC, General Commercial District. Council District 8.**

[Staff recommended approval]

[Planning Commission recommended approval – Unanimous]

2. **Request by Sharon Greene**, located at 2253 Santee River Road, St. Stephen, **TMS #049-00-02-018** (2 Acres) from **GC, General Commercial District to Flex-1, Agricultural District**. Council District 8.
[Staff recommended approval]
[Planning Commission recommended approval – Unanimous]
3. **Request by Brenda Fishburne**, located at 923 Old Back River Rd., Goose Creek, **TMS #244-15-07-005** (.38 +/- Acres) from **R-1, Single Family Residential District to R-2, Manufactured Residential District**. Council District 3.
[Staff recommended approval]
[Planning Commission recommended approval – Unanimous]

C. Consideration prior to Second Reading of the following:

1. **Bill No. 12-01**, an **ordinance** to modify the official Zoning and Development Standards Map of Berkeley County, South Carolina, **Re: Charlie O. Howard, II for Marshal Manigault, Jr.** located at 1616 North Highway 52, Moncks Corner, **TMS #103-00-02-004** (4.0 +/- Acres) from **Flex-1, Agricultural District to RNC, Rural Neighborhood Commercial District**. Council District 8.
[Staff recommended denial]
[Planning Commission recommended denial - Unanimous]

March 7, 2012
S/Catherine R. Windham
Interim Clerk of County Council